



Appeasing China

Restricting the Rights of Tibetans in Nepal

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Map of South Asia



Map No. 4140 Rev. 3 UNITED NATIONS
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Map of the Kathmandu Valley



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I. Summary

We are protesting because we want to tell the truth about our country and we want justice from the UN and human rights. We want to show other countries the real situation in Tibet. This is our aim.

– Nun from Swyambu, Kathmandu, March 29, 2008

I was peacefully protesting when I was hit on the head by police and fell to the ground. I was then hit with *lathis* [canes] on the feet and legs by three policemen before they ran off and I was helped home by a passerby. Both of my feet are fractured. The doctor told me my left foot will never be the same again.

– 25-year-old Tibetan, Kathmandu, March 19, 2008

We want the Nepali establishment to take severe penal actions against those involved in anti-China activities in Nepal.

– Zheng Xianglin, Chinese ambassador to Nepal, May 12, 2008

On March 10, 2008, some 700 to 1,000 Tibetans living in Kathmandu gathered at Boudha Stupa to mark “Tibetan National Uprising Day,” the anniversary of the 1959 Tibetan rebellion against China’s rule in Tibet. As the protesters proceeded out of the stupa gate, some young Nepalis pretending to join the protest reportedly started throwing rocks in the direction of the police. Nepali police then moved in and brutally dispersed the demonstrators with *lathis*, arresting more than 150 people. All those detained were released later the same evening without charge.

As news of continuing protests in Tibet and the Chinese government’s harsh crackdown reached Nepal and the world in March, many Tibetans in Nepal felt compelled to speak out. Since March 10, members of Nepal’s Tibetan community have frequently carried out peaceful protests (from April 3-15 protests were temporarily suspended to respect the period of Nepal’s Constituent Assembly elections). Under slogans of “Free Tibet” and “Save Tibet,” Tibetans in Nepal have been calling on the Chinese government to allow Tibetans their rights to freedom of

expression and peaceful assembly; cease excessive use of force against Tibetan protesters; release all Tibetans who have been arrested or detained after participating in protests or for the peaceful exercise of their political views; and allow international media unobstructed access to Tibet. More recently they have called for a United Nations investigation inside Tibet and medical care for those injured in the demonstrations in Tibet.

This report documents violations of human rights by the Nepali authorities, particularly the police, against Tibetans involved in demonstrations in Kathmandu, Nepal. These include unnecessary and excessive use of force, arbitrary arrest, sexual assault of women during arrest, arbitrary and preventive detention, beatings in detention, unlawful threats to deport Tibetans to China, and unnecessary restrictions on freedom of movement in the Kathmandu Valley. Nepali authorities have also harassed Tibetan and foreign journalists and Nepali, Tibetan, and foreign human rights defenders.

At least 8,350 arrests of Tibetans were made between March 10 and July 18 (many people were arrested more than once). While the frequency of protests has diminished since May, protests have continued to take place on an almost weekly basis, with continuing abuses by Nepali authorities in response. Few of those arrested have been provided with a reason for their detention and virtually all have been released without charge.



Tibetan protesters being arrested by Nepali police near the Chinese Embassy Visa Section on March 31, 2008. © 2008 Private

Human Rights Watch has directly observed many of the Tibetan demonstrations in Kathmandu and the police response to them. From March 10 to 28, Nepali police consistently responded to the demonstrations with unnecessary or excessive force, using *lathis* to beat protesters in the head and body, and by kicking and punching them. Police officers have sexually assaulted Tibetan women during arrest. Many women and girls have reported male police officers groping them and kicking or hitting them with a *lathi* in the groin.

Beginning around March 28, perhaps because of media coverage of the authorities' abusive tactics, police officers began using force in less visible ways, such as by having a group of police surround protesters before kicking and punching them in the lower body.

The police have also used unnecessary force to carry out arrests, at times with the apparent intent to disperse crowds of protesters. Threats of violence and sexual intimidation also appear to have been used to deter future demonstrations.



A Tibetan nun cornered and beaten by a Nepali police officer near the UN complex on April 21, 2008. © 2008 Private

The authorities typically detained those arrested for several hours before releasing them in the evening without charge. On two occasions Tibetans were detained overnight: 99 people were held in four locations on April 16, and 68 were held at Ghan II Police Barracks on April 2.

Since March 20, Nepali authorities have also been arresting Tibetans to prevent them from reaching protests and as an apparent means of intimidating and harassing the Tibetan community in Nepal. Tibetans and Nepalis resembling Tibetans, such as monks and nuns, have been arrested in Kathmandu's streets, from taxis and public buses and from tea shops.

Human Rights Watch has documented ill treatment of Tibetan detainees. Police, especially at Boudha Police Station, have severely beaten detainees. Detainees, many of whom suffered injuries while being arrested, have been provided limited—or no—medical care. Dozens of people have been held overnight in places with wholly inadequate facilities.

Nearly all Tibetan protesters interviewed by Human Rights Watch reported being threatened with deportation to China. This threat is being used during arrest and

against those in detention with the apparent aim of instilling fear within the Tibetan community or to discourage future protests. The authorities' widespread use of this threat suggests it is Nepali government policy. Returning Tibetan demonstrators to China would violate Nepal's obligations under international law not to send individuals to a place where they are likely to be tortured or, in the case of refugees, face persecution.

The Nepali government has placed severe restrictions on the movement of groups of Tibetans within Kathmandu and in the Kathmandu Valley, including nuns, monks, and elderly religious practitioners, who regularly move between the three main Tibetan areas (Swyambu, Boudha, and Jawalake). Police reportedly have put under surveillance individuals perceived to be leaders of the protests and have closely monitored locations of importance to Tibetans in Nepal, such as Jawalake Tibetan Camp, the Tibetan Reception Center, Kopan monastery, and a nunnery in Swyambu.

Nepali police have also engaged in physical attacks on and harassment of Tibetan and foreign journalists and intimidation of human rights defenders. On March 24, the authorities arrested members of the nongovernmental organization Amnesty International-Nepal and Nepali human rights defenders prior to a planned demonstration. Human rights monitors and journalists have been photographed and questioned by individuals identifying themselves as Nepali Intelligence.

China has played an important, if at times hidden, role in the Nepali government's crackdown on Tibetan demonstrations. The unusual number of statements from Nepali leaders reiterating the ban on "anti-China" activities suggests increasing pressure from Beijing (see below). Prime Minister Girija Prasad Koirala on several occasions vowed to prevent demonstrations by Tibetans in Nepal, stating that "no anti-China activity will be allowed on Nepali territory." Nepal's Home Ministry spokesperson was quoted saying, "We have given the Tibetan refugees status and allow them to carry out culture events. However, they do not have the right for political activities.... We will not allow any anti-China activities in Nepal and we will stop it." Soon after the protests began, on March 19, 2008, the Communist Party of Nepal (Maoist) (CPN-M), the largest party in the recently elected constituent assembly, issued a statement expressing solidarity with China and saying, "We want

to draw the attention of the concerned [Nepali government] authority to the activities against China at the Nepal-China border.”

China has long claimed that the bedrock of its foreign policy is “non-interference” in the internal affairs of other countries. Yet it has directly involved itself in Nepali affairs. China’s ambassador has publicly exerted China’s influence on the Nepali government through strong and frequent statements, calling for the arrest of protesters and urging the government to take strong action. Senior Nepali government officials, and officials involved in the detention of Tibetans, have cited the relationship between China and Nepal, and Nepal’s “one China” policy as the reason for the arrest of Tibetan protesters. With the exception of three Tibetans arrested at their homes under the Public Security Act on June 19, 2008, Nepali law has not been used to justify arrests and those detained have not been charged.

International human rights law guarantees refugees and other non-citizens freedom of assembly and expression, and freedom from mistreatment. While this report focuses on events in Kathmandu from March through April 2008, protests and government crackdowns continue. The rights of Tibetans in Nepal continue to be under assault as peaceful Tibetan protesters are arrested for purely political reasons.

Key recommendations

Human Rights Watch urges the government of Nepal to respect the fundamental rights of Tibetans to engage in peaceful assembly and expression, and to end the arbitrary arrest, harassment, and mistreatment of those who do so. We also call on the Chinese government to stop its public and private pressure on the Nepali government to violate Tibetans’ rights.

In particular, we urge the Nepali government to:

- Publicly express support for freedom of expression and assembly for all persons in Nepal, regardless of legal status, and cease dispersing peaceful protests by Tibetans.

- Take all necessary action to end arbitrary arrests, including unlawful and preventive arrests, of Tibetans and others engaged in peaceful political activity or otherwise going about their daily lives.
- Publicly oppose the deportation of any Tibetan to China who faces a risk of persecution or torture there, and take all necessary action, including the issuance of warnings and the imposition of disciplinary action, against Nepali police who threaten Tibetans with deportation.
- Ensure respect for freedom of movement, including by issuing orders to cease restrictions on the freedom of movement of Tibetans in the Kathmandu Valley.
- Issue orders to all police officers to cease sexual assaults on female protesters. Investigations should be conducted into sexual assaults on protesters that have taken place since March 10, 2008, and the individuals responsible should be prosecuted. Superior officers should also be held responsible for creating an environment in which officers under their command have sexually assaulted female protesters.
- Adopt measures to end interference and harassment of the media and human rights defenders, including by issuing public statements in support of the right of individuals to engage in freedom of expression, association, and assembly. Issue orders to the police to cease harassment of journalists and human rights defenders.

We urge the government of the People's Republic of China to:

- End all forms of pressure, public and private, on the government of Nepal to arrest, prosecute, or otherwise interfere with Tibetans who are exercising their rights under international human rights law. Such pressure is ironic from a state that consistently asserts that “non-interference” in the internal affairs of other states is the bedrock of its foreign policy.
- Cease all police operations in Nepal that are not under the direct control of the Nepali authorities. Ensure that any authorized police activity inside Nepal is in full accordance with Nepali and international law. Remove from Nepal and discipline as appropriate all Chinese security forces acting outside of Nepali authority or law.

- Permit Tibetans in China to exercise their right of freedom of movement to leave and to return to China.
- Cease public statements attempting to intimidate Tibetans as well as Nepali and foreign journalists and human rights defenders in Nepal from exercising their basic human rights.

A full list of recommendations can be found at the end of this report.

Methodology

This report is based on human rights monitoring and interviews conducted between March 10 and April 9, 2008, in Kathmandu, Nepal. This included direct observation of protests and arrests, conditions in detention, and treatment in hospitals; regular observation visits to Tibetan areas of Kathmandu (Jawalakel, Boudha and Swyambu); interviews with more than 90 Tibetan protesters; and interviews with several non-Tibetan protest eyewitnesses, Tibetan community and religious leaders, Nepali medical personnel and police officers, and United Nations personnel in Nepal.

Interviews were conducted in English or in Tibetan through an interpreter. A small number of interviews were conducted on the telephone. All names of Tibetan interviewees have been changed, usually at the request of the interviewee, for security reasons.

II. Background

In recent decades, a steady stream of Tibetan asylum seekers has crossed the Himalayan mountain range to escape political, religious, and cultural persecution and seek refuge in Nepal. Kathmandu has also been used as a transit point for asylum seekers on their way to Dharamsala, India, which has a large Tibetan presence. In the last 10 years, the Tibetan community in Nepal has been stable at around 20,000 people.¹

Many Tibetans who arrived in Nepal before January 1, 1990—about 14,000 individuals—are regarded as refugees by the government of Nepal, which normalizes their residence in Nepal with so-called Refugee Cards (RC). Those who arrived after January 1, 1990, are officially regarded as persons “in transit” because the Nepali government stopped issuing Refugee Cards to those arriving after that date. Many new arrivals from Tibet go through Nepal to reach India, though not all Tibetans are “in transit.” Nepal has not ratified the 1951 Convention relating to the Status of Refugees, which regulates the treatment of refugees under international law.²

Tibetans in Nepal face discrimination and uncertainty due to their tenuous legal status, and face restrictions on state-provided education, health care, and employment. Their freedom of movement is restricted by requirements that they register with the chief district officer (CDO)³ when they change residence and when traveling outside the district in which they are registered. Tibetans with a Refugee Card cannot travel outside of Nepal unless they obtain an exit permit from the government of Nepal, which is valid for one trip per year to only one destination.⁴

Tibetans in Nepal also fear being deported without being afforded basic due process rights. These include the right to seek political asylum when they have a well-

¹ UN High Commissioner for Refugees, *2005 UNHCR Statistical Yearbook*, p. 435, <http://www.unhcr.org/statistics/STATISTICS/4641beb10.pdf>.

² Convention relating to the Status of Refugees, 189 U.N.T.S. 150, *entered into force* April 22, 1954.

³ The chief district officer is a civilian government administrator who has quasi judicial powers, including to maintain law and order in the district.

⁴ Human Rights Watch interview with two Tibetans seeking to obtain exit permits, Kathmandu, March 2008 and June 2008.

founded fear of persecution and the right not to be sent to a country where they are likely to be tortured. For instance, in May 2003 Nepal deported 18 Tibetans to China without regard for due process on charges of travelling without valid documents.⁵ The arbitrary nature of the deportation created fear within the Tibetan community. In late February 2008, China issued an Interpol request for a Tibetan man who had recently arrived in Nepal. The Nepali authorities arrested him at the Tibetan Reception Center and returned him to China without permitting him to contest his deportation before a competent authority. His arrest at the Tibetan Reception Center, the center responsible for processing Tibetans in transit from Tibet to India, long regarded as a safe haven, caused deep fear within the Tibetan community.⁶

Successive Nepali governments have consistently stated that “anti-China” activities would not be allowed on Nepali soil. China is an important economic and political neighbor for Nepal. At times this strategic relationship has deepened, such as during former King Gyanendra’s rule from February 2005 to April 2006. Immediately preceding King Gyanendra’s assumption of direct control of Nepal on February 1, 2005, the Nepali government closed the Office of the Representative of His Holiness the Dalai Lama. The following day the Chinese government was reported in China’s *People’s Daily* as welcoming the closure.⁷ While there was global condemnation of then King Gyanendra’s seizure of power on February 1, 2005, China stated that it was an internal matter for Nepal.⁸

In 2007, Nepal’s then-ruling all-party government, known as the Seven Party Alliance, which was broadly accepted as a democratic government, took the unprecedented step of deregistering the Bhota Welfare Office, a local organization assisting Tibetans living in Nepal. The organization had been registered by the Kathmandu CDO in 2007 after agreeing to delete the word “Tibetan” from the name of the organization. The organization challenged its deregistration in the Supreme Court of Nepal. During the final hearing on the case in February 2008, the government attorney handed a confidential file to the judicial panel, which denied the organization’s lawyers access

⁵ “Nepal deports 18 Tibetans,” BBC Online, May 31, 2003, http://news.bbc.co.uk/2/hi/south_asia/2952698.stm.

⁶ Human Rights Watch interview at Tibetan Reception Center, Kathmandu, March 21, 2008.

⁷ “China welcomes Nepal’s closure of Dalai Lama’s office,” *People’s Daily Online*, February 2, 2005, http://english.people.com.cn/200502/02/eng20050202_172693.html.

⁸ “Nepal King Names New Cabinet, World Condemns Him,” Reuters, February 3, 2005.

to the documents. The Supreme Court then issued an oral judgment that the organization could not be re-registered.⁹ This deregistration means the organization is effectively no longer allowed to operate in Nepal, which has serious consequences for the welfare of Tibetans in Nepal. It also raises broader concerns for freedom of association in the country.

Tibetans face considerable hurdles when they seek redress for abuses by the Nepali security forces. Human Rights Watch has continually raised concerns about the impunity enjoyed by security forces for even serious human rights violations, especially during the decade-long civil war, which ended in 2006.¹⁰ The army in particular has a well documented history of torture, extrajudicial killings, and enforced disappearances. The failure by various governments of Nepal to address past human rights violations has helped to create an environment in which violations by the security forces of Nepal continue to occur. The current abuses of Tibetan protesters should be viewed as part of this broader failure to address the culture of impunity in Nepal.

⁹ Human Rights Watch interview with one of the Nepali lawyers who argued the case in the Supreme Court, Kathmandu, March 2008. Written judgments usually follow oral judgments several months after the oral judgment.

¹⁰ “Nepal: Urgent Need to Restore Rule of Law: Failure to Punish Those Responsible for Attacks and Killings Fuels Impunity,” Human Rights Watch news release, May 23, 2008, <http://hrw.org/english/docs/2008/05/23/nepal18928.htm>; “Nepal: Truth Commission Bill Disregards Victims’ Rights: Draft Bill Fails to Meet International Human Rights Standards,” Human Rights Watch news release, August 22, 2007, <http://hrw.org/english/docs/2007/08/22/nepal16720.htm>; “Nepal: Supreme Court Orders Action on ‘Disappearances’: Government Should Take Immediate Steps to End Impunity,” Human Rights Watch news release, June 15, 2007, <http://hrw.org/english/docs/2007/06/15/nepal16194.htm>; “Nepal: After Peace Agreement, Time for Justice: Army, Maoists Must Account for Killings, ‘Disappearances’,” Human Rights Watch news release, December 1, 2006, <http://hrw.org/english/docs/2006/12/01/nepal14727.htm>; Human Rights Watch, *Clear Culpability: “Disappearances” by Security Forces in Nepal*, (New York: Human Rights Watch, 2005), <http://hrw.org/reports/2005/nepal0205/>.

III. Violations of the Right to Peaceful Assembly

Unnecessary and excessive use of force

In the weeks following the start of Tibetan protests in Kathmandu on March 10, 2008, Human Rights Watch observed 18 demonstrations. In all 18 demonstrations, Nepali police used unnecessary or excessive force against protesters. Police used unlawful force during arrests and in attempting to disperse demonstrations. In nearly all of the protests, Tibetans demonstrated peacefully; we are aware of only one case in which protesters reportedly used violence, a March 10 protest in which Nepali youth, who appear to have been fake protestors, threw rocks at police.

The Nepali authorities have not provided a legal basis for breaking up the demonstrations and arresting participants. Nepali law does provide regulations on public gatherings. Under the Local Administration Act, 1971, the chief district officer (CDO) has primary authority for the maintenance of peace and security at the district level.¹¹ While Nepali law does not require a permit from the government to engage in peaceful assembly, the Local Administration Act allows the chief district officer to prohibit gatherings in specified areas. These are areas declared to be riot affected areas¹² and specified public roads where “obstruction” is prohibited.¹³ However the chief district officer has not declared any areas to be riot affected, and no Tibetan protests have taken place in the three existing specified public roads.¹⁴

The Local Administration Act also allows the chief district officer to “issue an order for not allowing the gathering of more than five persons at the same place with the

¹¹ Local Administration Act, 1971, section 5(5), “The functions, duties and powers of the Chief District Officer shall be as follows: (a) Maintaining peace, order and security in the district; (b) Extending co-operation in development activities undertaken in the district by His Majesty's Government, the District Development Committee, Municipalities or Village Development Committees; (c) Undertaking supervision, conservation and maintenance of all properties of His Majesty's Government in the district; (d) [Repealed]; (e) Undertaking other actions in accordance with orders or instructions issued by His Majesty's Government from time to time.”

¹² Ibid., sec. 6(b)(1).

¹³ Ibid. sec. 6(c)(1)(a) (locations in which “obstruction or obstacle in the smooth operation of the road through creating traffic jam or any other means” are prohibited).

¹⁴ In Kathmandu, roads that are currently permanently restricted are those bordering the Palace, the Parliament, and Ratna Park. Protests outside the Chinese Embassy Visa Section take people close to the Palace on their way to the demonstration, but none take place at the Palace.

purpose of hooliganism or turmoil in such area and time.”¹⁵ Such an order appears applicable only to specified individuals gathering at that time and area,¹⁶ and no such order is known to have been issued to any Tibetan protester.

International law protects the right of peaceful assembly.¹⁷ Restrictions for reasons of national security or public order may be imposed, but only when in conformity with the law, where they serve a permissible purpose, and are necessary and proportionately applied.¹⁸ Non-nationals lawfully in a country are entitled to the same rights of assembly as nationals.¹⁹

Even if the police actions against the demonstrators were a warranted infringement on the right to peaceful assembly, the authorities have used unnecessary and excessive force against protesters. International human rights law places restraints on the use of force by police and other security forces. According to the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, police should use force only when unavoidable and, even then, should exercise restraint and act in proportion to the seriousness of the offense and the legitimate objective to be achieved. The force used must minimize damage and injury.²⁰ The unlawful use of force by police can amount to violations of the prohibition against cruel or inhuman treatment.²¹

¹⁵ Sec. 6(3)(A).

¹⁶ Sec. 6(4) (the CDO “shall send a notification to the concerned person explaining the reasons for the issuance of *any order to any person*” under that provision (emphasis added)).

¹⁷ See International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, art. 21. Nepal ratified the ICCPR in 1991.

¹⁸ See Manfred Nowak, *ICCPR Commentary* (Kehl: NP Engel, 2nd ed., 2005), pp. 488-94.

¹⁹ See Human Rights Committee, General Comment 15, “The position of aliens under the Covenant” (Twenty-seventh session, 1986), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.6 at 140 (2003), para. 6 (“once aliens are allowed to enter the territory of a State party they are entitled to the rights set out in the Covenant”).

²⁰ Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990). While the Basic Principles are not binding international law, they constitute authoritative guidance for interpreting international human rights law regarding policing. Force is considered “unnecessary” when it is applied in circumstances in which no force should have been used at all – such as against peaceful demonstrators acting in accordance with the law. Force is “excessive” when there is a lawful basis for the police to use force, such as when demonstrators commit violence or resist arrest, but use force that is disproportionate to the offense and legitimate policing requirements.

²¹ See, e.g., ICCPR, art. 7, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987, art. 16. Nepal ratified the Convention against Torture in 1991.



Tibetan monks chased by Nepali police near the UN complex on March 24, 2008. © Private

In our observations of police use of force in response to demonstrations by Tibetans after March 10, we found that Nepali police used unnecessary force against peaceful demonstrators and excessive force against demonstrators resisting arrest. Every one of the more than 90 Tibetan demonstrators interviewed by Human Rights Watch had either been beaten during a protest or had observed friends being beaten.

The manner in which police used force appeared to change over time. Initially law enforcement authorities aimed to focus on dispersing the crowds and openly used brutal force, such as beatings to the head and body with *lathis* (wooden canes of approximately

1.5 meters used by police throughout South Asia for crowd control), and kicking and punching. As reports of this ill-treatment began to surface in the media the authorities appeared to change tactics. Beginning in late March, protesters reported that police had begun to hit them on lower parts of the body with *lathis*; to encircle and kick individual protesters; to target punches to the kidneys; to hold protesters by the neck, cutting off air; and to pinch, scratch, and pull the protesters' hair.

Dispersing crowds

In the first week or so of protests, crowd dispersal was more common than mass arrests.²² Small numbers of people were arrested, but large numbers were dispersed

²² This is with the exception of the arrests that took place on March 10, 2008.

using unnecessary and sometimes excessive force. During this period, the police would first ask the crowd to disperse before using force; this practice seemed to stop as the demonstrations continued.

Following are some specific incidents from the first week of demonstrations.

March 10

Between 700 and 1,000 Tibetans gathered at Boudha Stupa on the morning of March 10 to carry out their annual peaceful protest to commemorate March 10, 1959. As the procession left the gate of Boudha Stupa and began to move west along Boudha Road towards Kathmandu, Nepal Police moved in and within a few minutes prevented the procession from proceeding further. Tibetan protesters report that they then witnessed Nepali youth pretending to join the protest throwing stones in the direction of police, which swiftly led to a police *lathi* charge. Nima Tsering, age 61, reported being beaten on March 10:

On March 10, when I was going along the road, my aim was human rights, not to disturb Nepal or China. When I reached Pasang Lama Chowk I was beaten with a stick on my legs and back and was unconscious for 15 minutes.²³

A nun from Swyambu told Human Rights Watch about what happened to nuns on March 10:

Some [policemen] hit the nuns, not only nuns but many Tibetan people. They were hit very bad and they got wounded. Around 15 nuns were hit on the back and now they are black and still they hurt. We asked them to check with the doctor but they said, 'It's ok, we did the protest for our country.'²⁴

²³ Human Rights Watch interview with Nima Tsering, Kathmandu, April 6, 2008.

²⁴ Human Rights Watch interview with senior nun from Swyambu, Kathmandu, March 29, 2008.

Tashi Tsomo, age 49, reported that police pushed her with such force that she fainted.²⁵ Others have reported seeing Tibetans beaten with sticks and kicked. One man was beaten so hard on his head that he was taken to hospital by his friends.

The force used on March 10 appears to have been focused on dispersing the protesters, and both those arrested and those who fled the location of the protest reported the use of force against them.

March 14

On the evening of March 14, police used unnecessary force against 70 to 80 peaceful protesters, three of whom were arrested. The group was standing just outside Boudha Stupa Gate between 6:30 and 7:00 p.m. when approximately 50 Nepal Police and Armed Police charged them with *lathis*. As the protesters attempted to run away, police chased them and hit them with *lathis*, shouting, “We have to hit them!”²⁶

Nima Phuntsok, age 25, was seriously injured on this occasion:

I was hit on the head by police and fell to the ground. I was then hit with *lathis* on the feet and legs by three policemen before they ran off and I was helped home by a passerby.²⁷

Nima Phuntsok had fractures in both feet and learned that his left foot is so badly injured that it will never fully recover.²⁸ He has not reported his torture to the police or filed a claim under the Torture Compensation Act, as he fears retaliation by the police.

²⁵ Human Rights Watch interview with Tashi Tsomo, Kathmandu, March 24 and April 8, 2008.

²⁶ Human Rights Watch interview with Kartso, age 26, Tenzin Namgyal, age 23, Tsetan Norbu, age 24, and Nima Phuntsok, age 25, Kathmandu, March 19, 2008.

²⁷ Human Rights Watch interview with Nima Phuntsok, age 25, Kathmandu, March 19, 2008.

²⁸ Human Rights Watch interview with Nima Phuntsok, Kathmandu, March 19, 2008.

March 15

On March 15, police broke up a peaceful gathering of more than 100 protesters in front of UN House in Pulchowk and arrested 12. The protesters had asked the Nepal Police to allow them to protest for 10 or 15 minutes, but the police stated that they had received orders from senior authorities and immediately charged the group. The police focused their attention on a small group of hunger strikers sitting quietly off to one side. After this group was arrested, Human Rights Watch observed the police disperse the remaining protesters by charging them and beating them with their *lathis*.

March 17

On March 17, a large group of Tibetans began a peaceful protest around 10:30 a.m. After approximately one hour, the police began beating and arresting the protesters. The police then allowed the remaining protesters to demonstrate in front of the UN House sign on Pulchowk Road for about an hour. The police then surrounded the protesters and fired tear gas into the crowd, particularly targeting a group of 11 hunger strikers. The crowd immediately dispersed, and those who fled in a northerly direction were chased by the Lalitpur district police until they crossed Bagmati Bridge (approximately two kilometers), where Kathmandu district police took over the chase.²⁹

Police assaults against protesters

Individual participants in the demonstrations gave detailed accounts of their treatment by police.

Tenzin Wangpo, age 23, told Human Rights Watch that he has joined most of the protests since March 10, and on every occasion has been assaulted by the police. He said that police hit him with *lathis*; kicked, pinched, and scratched him; pulled his hair; and hit him on the back of the knees with a *lathi*, forcing him to the ground. He alleges that police on two occasions kicked him in the kidneys. He said he was hit twice on the head with a *lathi* and once in the mouth. He said that on more than one

²⁹ Human Rights Watch interview with Dawa Tsering, Kathmandu, April 6, 2008 and interview with Tenpa Trinley Kathmandu, March 17, 2008.

occasion he was pushed onto the ground near a police van while as many as five police officers stepped on his stomach and chest and another six or seven surrounded him to block the view of the media. He said he was also verbally abused by the police.³⁰

Dukar Gyal, age 30, reported that the police kicked and hit him with sticks on the back and shoulder before they arrested him on March 10.³¹ Dawa Tsering, age 25, said he was severely beaten, including on the head, before being arrested and taken to Kamal Pokhari Police Station on March 10.³² Tenzin Gyaltsen, age 27, alleged being hit with a *lathi* by the police on March 10.³³ Tsering Pinchok, age 36, has reported being kicked in the stomach on March 15.³⁴ Nima Tsering, age 61, said police hit him on the head on several occasions.³⁵ All said they had been peacefully protesting when the police assaulted them.

Sherab Dolma, age 22, reported seeing police beat protesters on the legs, back, and buttocks on March 24. Disturbed by seeing a police officer beat and push a woman to the ground, she got out of the microvan in which she was traveling and joined the protest, only to be arrested herself.³⁶

After March 28, the police appeared to change their tactics against individual demonstrators. In place of *lathi* attacks to the head and upper body, there were significant increases in reports of police beatings on lower body parts with *lathis*, punches and kicks to the kidneys, and pinching, scratching, and hair pulling. Namcho Rimpoche, age 29, told Human Rights Watch that on March 30,

I was lying on the ground and many police officers made a circle around me, and the police started hitting me and kicking me down low.

³⁰ Human Rights Watch interview with Tenzin Wangpo, Kathmandu, March 25 and April 6, 2008.

³¹ Human Rights Watch interview with Dukar Gyal, Kathmandu, April 6, 2008.

³² Human Rights Watch interview with Dawa Tsering, Kathmandu, April 6, 2008.

³³ Human Rights Watch interview with Tenzin Gyaltsen, Kathmandu, March 27, 2008.

³⁴ Human Rights Watch interview with Tsering Pinchok, Kathmandu, April 6, 2008.

³⁵ Human Rights Watch interview with Nima Tsering, Kathmandu, April 6, 2008.

³⁶ Human Rights Watch interview with Sherab Dolma, Kathmandu, April 6, 2008.

They punched and kicked me in the kidneys and upper ribs. They also pinched me.³⁷

On March 29, following arrests of peaceful protesters outside the Chinese Embassy Visa Section, Human Rights Watch observed bruises and bleeding scratch marks on men and women detained at Ghan II Police Barracks. These included major bruising on a nun's leg resulting from being beaten with a *lathi*, and a monk with bleeding and loose teeth after a police officer punched him in the face.

Tashi Dolma, a 25-year-old woman, told Human Rights Watch,

On March 31, I was protesting at the Chinese Consulate and I was kicked in the back of my ribs while they arrested me. Then in the police jeep I was held strongly by the neck.

Tashi Dolma, who has epilepsy, reported that this treatment resulted in her having an epileptic fit while in detention. She also reports that on a separate occasion three female police officers held her while a male police officer hit her with a *lathi*. She also said that police officers had kicked her in the groin, the back, and the buttocks.³⁸

On March 31, Samphel, age 24, a Nepali monk, was beaten on his kidneys by three police officers while a fourth police officer held him tightly by the neck.³⁹ Penpa Dolma, age 15, reported seeing police beat a group of young men using punches to the kidney area on April 2.⁴⁰

Police have beaten a number of protesters so badly that they required medical attention while in detention. On March 17, Tenzin Dolkar, age 39, and Nwang Tenzin, age 25, were both taken to the police hospital for treatment. Tenzin Dolkar's arms were X-rayed, as they had been beaten with *lathis* when she tried to protect her

³⁷ Human Rights Watch interview with Namcho Rimpoche, Kathmandu, March 25 and April 6, 2008.

³⁸ Human Rights Watch interview with Tashi Dolma, Kathmandu, March 24 and April 6, 2008.

³⁹ Human Rights Watch interview with Samphel, Kathmandu, March 30, 2008.

⁴⁰ Human Rights Watch interview with Penpa Dolma, Kathmandu, April 6, 2008.

head.⁴¹ Nwang Tenzin had similar injuries on his arms, and had also fallen to the ground and been beaten on the back of his ribs with a *lathi*. He told Human Rights Watch,

The police took my friend, so I tried to hold onto him. Then the police tried to hit me with a *lathi*, so I put my arms up and now I have a damaged arm. Then I fell to the ground and the police beat me while I was on the ground, and now I have this large bruise on my back. My friend picked me up because I couldn't walk and then the police put me into the van.⁴²

On March 24, a Tibetan welfare officer reported being called to Jawalake Police Station because two monks had been badly beaten on the head and required medical attention.⁴³ On March 25, Thupten Tashi, age 26, and Nawang Chogyang, age 25, were X-rayed for injuries to the head and ribs, respectively, and Nawang Rabjor, age 38, was treated for soft tissue damage. All three were unable to walk unaided. Dichen Dolkar, age 18, had her shoulder X-rayed and was given injections in both hips to reduce pain on March 30.⁴⁴

Protesters attempting to protect others being beaten have also been beaten and arrested by the police. Lobsang Jinpa, age 26, was arrested after he asked the police to stop beating a monk on March 20.⁴⁵ Tenzin Jinpa, age 37, saw a group of women being beaten with *lathis* on March 15, so he put his arms around the women, and was subjected to a harsh beating to his exposed back. On March 24 he saw five police officers beating his friend on the back and legs with a *lathi*, so he tried to intervene and three police officers kicked him two or three times on his back, slapped his face, and then beat his hip.⁴⁶ Police also beat two foreign journalists who questioned police officers during protests about the use of force against peaceful Tibetan protesters.

⁴¹ Human Rights Watch interview with Tenzin Dolkar, age 39, and Nwang Tenzin, age 25, Kathmandu, March 17, 2008.

⁴² Human Rights Watch interview with Nwang Tenzin, age 25, Kathmandu, March 17, 2008.

⁴³ Human Rights Watch interview with Dhondup Gyatso, Kathmandu, March 26, 2008.

⁴⁴ Human Rights Watch interview with Dichen Dolkar, Kathmandu, March 30, 2008.

⁴⁵ Human Rights Watch interview with Lobsang Jinpa, Kathmandu, April 6, 2008.

⁴⁶ Human Rights Watch interview with Tenzin Jinpa, Kathmandu, March 24, 2008.

Nepal Police and the Armed Police have also caused physical harm to Tibetan protesters following their arrest during transfer in vans, trucks, and jeeps to places of detention. This physical abuse appears to be intentional. The observed shift from visible assaults to less visible abuses was accompanied by increased reports of beatings inside police vehicles, more frequent use of vehicles without windows (such as large Armed Police Force trucks), and police vans with closed tinted windows.

On one occasion Human Rights Watch observed Nepal police holding a protester by the neck while another police officer hit him inside a police van. Namcho Rimpoche, age 29, reported seeing two women hit in the back of a truck after protesting at the Chinese Embassy Visa Section on March 27.⁴⁷ Tashi Tsomo, age 49, reported that while being transferred from the protest on March 31 police officers held her on the floor of a police truck while four or five male police officers walked on her body. She said,

A friend tried to help me get up but the police just kept doing it. I still have pain in here [pointing at her chest]. There were no women police in the truck with us, even though most of us in the truck were women.⁴⁸

On numerous occasions, particularly after March 28, Human Rights Watch received reports of police trucks being driven recklessly with the apparent intention of throwing about passengers in the back of the truck and causing them injury. On one occasion a protester had to be taken to the hospital after reaching Ghan II police barracks.⁴⁹

⁴⁷ Human Rights Watch interview with Namcho Rimpoche, Kathmandu, March 25 and April 6, 2008.

⁴⁸ Human Rights Watch interview with Tashi Tsomo, Kathmandu, March 25 and April 6, 2008.

⁴⁹ Human Rights Watch interview with Tenzin Wangpo, April 2008.

Attacks on journalists

Nepali police have physically attacked and harassed journalists and sought to intimidate human rights defenders monitoring abuses against the Tibetan community in Nepal.

Nepali police physically assaulted journalists on at least two occasions. On March 17, a foreign journalist who was attempting to photograph arrests of protesters was punched in the face by a Nepali police officer outside the UN complex.⁵⁰ On April 17, Human Rights Watch observed a police officer manhandle, kick, and punch a foreign journalist.

On April 18, two Tibetan journalists covering a protest were arrested. Police specifically targeted Tenzin Choephel and Thupten Shastri⁵¹ out of a group of five Tibetan journalists a few minutes after the protest had finished. When Choephel and Shastri asked the reason for their arrest, a senior officer replied, “I don’t know the reason, but it might be because if there are many Tibetan journalists, then there are more Tibetan protesters coming.”

Foreign and Tibetan journalists and human rights workers observing protests have been photographed at close range (one meter) by what appear to be Nepal intelligence officials and also questioned.

Sexual assault of women during arrest

Nepali police have repeatedly sexually assaulted Tibetan women during arrest. Women, including girls under 18 years of age, reported male police officers groping their breasts and buttocks inside and outside their clothing. Some said they had been struck in the groin with a *lathi*. Sexual assault is never a legitimate law enforcement method. The numerous, strikingly similar cases reported, and the failure of the authorities to denounce such actions, let alone investigate those responsible, strongly suggest that sexual abuse of Tibetans by the Nepali police is systemic and tolerated.

⁵⁰ Human Rights Watch interview with the journalist in Kathmandu on March 18, 2008.

⁵¹ These names have not been changed.

Tashi Topgyal, age 17, said she was arrested at both UN House and at the Chinese Embassy. She told Human Rights Watch that policemen touched her breasts and buttocks outside her clothes and also tried to touch her breasts inside her clothes. She said she could not identify the police officers who assaulted her because two or three men were all restraining her and touching her while they arrested her and put her into the police van. When she asked the police why they were touching her, they laughed at her.⁵² Tashi Dolma, age 25, reported that on several occasions the police touched her on the breasts and buttocks while they put her into a police van.⁵³ Dawa Tsering, age 25, said that a police officer groped her while she was not fully conscious after she had fainted at a protest.⁵⁴ She also reports being groped during arrest on several other occasions.

Nima Tsering, age 38, said that she had her breast squeezed so forcefully by the police that she could not breathe properly. She said it was difficult to know which policeman did it, as there were so many policemen touching her through her clothes.⁵⁵ Pelkyi, age 35, reported having her breasts groped.⁵⁶ Tenzin Jinpa, age 37, said that a group of girls who protested with him on March 15 at the UN House told him that the police touched their breasts.⁵⁷ Tsering Tsomo, age 30, reported that on March 24 a policeman tried to hold her breast, so she screamed; the following day another police officer tried to hold her breasts. Tashi Tsomo, age 48, said that policemen tried to grab her breasts on March 24 when she was protesting at the Maitighar Mandala. At a protest on March 24 at UN House, an 18-year-old woman reported that the police touched her breasts and groped her groin area and tried to tear her clothes. She also reported that on March 28, seven or eight policemen attempted to sexually assault her while arresting her, and when she resisted they verbally abused her and her friends with sexually harassing language.⁵⁸

⁵² Human Rights Watch interview with Tashi Topgyal, Kathmandu, April 6, 2008.

⁵³ Human Rights Watch interview with Tashi Dolma, Kathmandu, March 24 and April 6, 2008.

⁵⁴ Human Rights Watch interview with Dawa Tsering, Kathmandu, April 6, 2008.

⁵⁵ Human Rights Watch interview with Nima Tsering, Kathmandu, April 6, 2008.

⁵⁶ Human Rights Watch interview with Pelkyi, Kathmandu, March, 2008.

⁵⁷ Human Rights Watch interview with Tenzin Jinpa, Kathmandu, March 24, 2008.

⁵⁸ Advocacy Forum interview with detained protester, Ghan II Police Barracks, Kathmandu, March 28, 2008. Interview notes provided to Human Rights Watch.

On March 29, following a demonstration at the Chinese Embassy Visa Section, Tibetan women told Human Rights Watch that policemen had been trying to put their hands inside women's trousers and touch them. Similar behavior was also reported following a protest at UN House on March 21.

Several women also reported being kicked or hit in the groin with a *lathi*, in some cases resulting in urinary tract injuries. Tashi Dolma, age 25, was kicked in the groin on March 24 while protesting at UN House.⁵⁹ Nima Sangmo reported being kicked in the groin on March 25.⁶⁰ Tsering Tsomo's friend was kicked in the groin on March 24.⁶¹

⁵⁹ Human Rights Watch interview with Tashi Dolma, Kathmandu, March 24 and April 6, 2008.

⁶⁰ Human Rights Watch interview with Nima Sangmo, Kathmandu, March 26 2008.

⁶¹ Human Rights Watch interview with Tsering Tsomo, Kathmandu, March 26, 2008.

IV. Arbitrary Arrest and Detention

At least 8,350 arrests of Tibetans were made between March 10 and July 18 (many people were arrested more than once).⁶² Arrests have continued since. While the frequency of protests has diminished since May, protests have continued to take place on an almost weekly basis, with continuing abuses by Nepali authorities in response. Few of those arrested have been provided with a reason for their detention and virtually all have been released without charge.

Typically, those arrested were detained for several hours and then released without charge in the evening between 7 and 10 p.m. On two occasions in April the authorities held large groups of Tibetans overnight: 68 were held at Ghan II Police Barracks on April 2, and 99 people were held in four locations on April 16.

International human rights law prohibits arrests and detentions that are arbitrary. An arrest or detention is arbitrary when not carried out in accordance with the law, or if the law allows for the arrest and detention of people for peacefully exercising their basic rights such as freedom of expression, association, and assembly.⁶³ Nepali police arrests of Tibetan demonstrators have either been without regard to Nepali law or violated fundamental freedoms, or both.

Senior government officials and officials questioned by Human Rights Watch at places of detention and in interviews with the media often cited the relationship between China and Nepal as the reason for the arrest of Tibetan protesters. On March 17, the district superintendent of police (DSP) informed Human Rights Watch

⁶² Human Rights Watch investigations found that at least 1,779 Tibetans and 13 Nepali human rights activists were arrested for participating in demonstrations in Kathmandu between March 10 and April 2, 2008. As of July 18 a further 6,571 protesters had been arrested since protests resumed on April 15. Official Nepali statistics on the number of Tibetans arrested are not available. The numbers in this report are based on information provided by formerly detained Tibetans to Human Rights Watch. The discrepancies between Human Rights Watch's numbers and those of other human rights organizations are minor.

⁶³ See ICCPR, art. 9 ("Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law"). According to the UN Working Group on Arbitrary Detention, the deprivation of liberty is arbitrary when a case falls into three categories: when there is no legal basis to justify the deprivation of liberty, when the deprivation of liberty violates certain articles of the Universal Declaration of Human Rights and the ICCPR, and when international norms relating to the right to fair trial are ignored or only partially observed. UN Commission on Human Rights, Working Group on Arbitrary Detention, http://193.194.138.190/html/menu2/7/b/arb_det/ardintro.htm (accessed June 18, 2008).

that the Tibetans detained at Jawalakele Police Station at the time were detained because of the Nepali government's policy regarding China. On March 20, the International Herald Tribune quoted Nepal's Home Ministry spokesperson saying, "We have given the Tibetan refugees status and allow them to carry out culture events. However, they do not have the right for political activities.... We will not allow any anti-China activities in Nepal and we will stop it."

Lower-level police officers have regularly stated they are "just following orders" or have given other reasons for arrest when questioned by Human Rights Watch. An assistant subinspector (ASI) on duty at Ghan II police barracks told Human Rights Watch that his barracks was being used to detain Tibetan protesters because he had been told that "they are dangerous and trying to create trouble for the UN, and these type of people must be kept here." Another ASI at Ghan II, on a separate occasion, said that protesters had violated Nepali law by protesting in a restricted area.

Tibetans told Human Rights Watch that when they asked police why they were being arrested, officers frequently said that they were simply following orders or did not know the reason. Sherab Dolma was once told she was being arrested "because she was Tibetan."⁶⁴

Under Nepali law, persons arrested must be produced before the adjudicating authority (usually the court or the CDO) within 24 hours of the detention. They must either be charged with a crime or released.⁶⁵ On only one occasion during the first round of protests between March 10 and April 3 were any detained Tibetan protesters given charge sheets.⁶⁶ The charges were dropped before being brought before a judge.

During two peaceful protests that took place on the afternoon of April 2 outside the Chinese Embassy Visa Section, the police arrested 56 individuals during the first protest at 1:30 p.m., and then an additional 17 individuals, including four children,

⁶⁴ Human Rights Watch interview with Sherab Dolma, Kathmandu, April 6, 2008.

⁶⁵ This does not apply to preventive detention under the Public Security Act.

⁶⁶ On April 16, 25 Tibetans detained at Singh Darbur were provided with arrest warrants, and on April 29 those detained at Ghan II Police Barracks were given arrest warrants. On both occasions the individuals detained were released the following day.

during the second protest at around 4:30 p.m. Five of those arrested in the second protest were taken to Kamal Pokhari Police Station, while the other 12 were taken to the Ghan II Police Barracks, where the first group of protesters was being detained. The detainees at Kamal Pokhari Police Station were released around 10:30 the same evening.

The authorities made no real effort to charge any of those arrested with criminal offenses. At 9:30 p.m. they informed the 12 protesters from the second protest detained at Ghan II Police Barracks that they were responsible for breaking a small plastic window in the police van in which they had been transported. They were told that they would be kept overnight for further investigation, but they were not formally charged. The other 56 Tibetan protesters detained at Ghan II Police Barracks refused to leave without them, and as a result, all 68 Tibetans spent the night at Ghan II Police Barracks. The detainees sought legal counsel after being informed they would be held overnight. A lawyer who came to the gate of Ghan II Police Barracks was denied entry.

The following morning, April 3, six of the 12 protesters detained in the second protest were given charge sheets stating they were detained “for investigation,” but not accused of a crime. They were then moved to Kamal Pokhari Police Station. The remaining 62 detainees, including six from the second protest, were given blank arrest warrants and later released. The six given charge sheets were also released that day, but only after negotiations during which Tibetan community leaders agreed to suspend protests until after Nepal’s Constituent Assembly election, scheduled to take place on April 10. In effect, the Tibetans’ release was won by giving up for a time their right to freely assemble.

The arrests appear to have been in part a response to pressure from the Chinese authorities to end the demonstrations outside the Chinese embassy. Human Rights Watch was informed by an ASI at Ghan II Police Barracks that on April 1, the day before the arrests, the police had been called out to investigate alleged damage to the Chinese Embassy gate by the Tibetan protesters. No damage was found. And on April 2, the Chinese ambassador to Nepal convened a press conference in Kathmandu during which he urged the government of Nepal to “take severer

measures to prevent these political organizations from organizing and implementing illegal political activities.”⁶⁷ As noted below, there is also evidence that a senior Chinese embassy official was pressuring the government to use the Offences against the State Act to charge some Tibetan protesters.

Preventive arrest and detention

Starting shortly after the initial protests on March 10, Nepali police began arresting Tibetans and Nepalis who appear Tibetan, such as monks, in the streets, in taxis and public buses, and in tea shops, apparently to prevent them from reaching protests and as a means of intimidating and harassing the community.

On March 20, the Nepal police began to arrest Tibetans as they moved in and around areas in which protests had taken place. Lobsang Jinpa, age 26, told Human Rights Watch that as he was walking towards UN House in Pulchowk, two police vans suddenly appeared, and he saw police arrest two monks who had been walking down the street. He said that when the monks refused to get into the vans, the police officers beat them on the back with *lathis*. When he asked the police to stop beating the monks, he himself was arrested. He was released without charge that evening.

Following this incident, police searched for Tibetans for about an hour in and around UN House. Human Rights Watch observed two nuns being arrested as they walked away from the area. Human Rights Watch also observed police arrest a Tibetan at a tea shop near UN House and saw around 10 Tibetans surrender themselves for arrest outside the same tea shop. By the end of the day, at least 99 Tibetans were in detention. They were all released without charge.

On March 24, the Nepal police carried out many preventive arrests. Lobsang Jinpa reported seeing monks and women in Tibetan dress being arrested in Boudha. He also saw taxis and microvans being stopped in front of Boudha Police Station, and saw at least one monk being taken out of a microvan and into the police station.⁶⁸

⁶⁷ Written statement by Chinese ambassador delivered in Nepal on April 2, 2008.

⁶⁸ Human Rights Watch interview with Lobsang Jinpa, Kathmandu, April 6, 2008.

Throughout the day, 70 Tibetans had been apparently preventively detained at Boudha Police Station. They were all released the same day.

The same day, March 24, arrangements had been made for two buses to transport Tibetans to an Amnesty International-Nepal protest at Maitighar Mandala, in Kathmandu. The buses took different routes to avoid being stopped by the police, but arrived at the Mandala around the same time. The individuals from one bus were able to join the peaceful protest, but only half of the individuals on the second bus were able to get off before four police officers entered the bus and drove it directly to a place of detention. Those detained were held for the remainder of the day and released without charge.⁶⁹ Dhondup Gyasto said, “They let me down early because I am an old man but all the others on the bus were taken to the Mahendra Police Club.”⁷⁰

On other occasions, the authorities picked up individuals at protest sites even before they began any kind of protest, and seemingly arrested individuals at random from Tibetan areas.⁷¹

Tenzin Jamphel, age 38, a Tibetan monk from Swyambu who has been arrested on 21 occasions for protesting, was active in organizing candle vigils at Swyambu on March 15-17 and the protest at Boudha on March 10. On March 18 at 9:00 a.m., plainclothes police officers from Swyambu Police Ward 15 came to his monastery, handcuffed him, and took him to Ward 15 Police Station. He was kept there for around four hours and asked by the inspector, “Who sent you? Why are you doing that [demonstrating]?” He was also told that the inspector had the power to release or continue to detain him, and that the inspector had been threatened with loss of his job if he didn’t arrest him. The inspector then said that Tenzin Jamphel would be taken to Naxal Police

⁶⁹ Human Rights Watch interviews in Kathmandu on March 24, 2008, with Pasang Tsering, who was able to descend from the second bus, and on March 26, 2008, with Dhondup Gyasto, who was driven away by police on the second bus.

⁷⁰ Human Rights Watch interview in Kathmandu on March 26, 2008, with Dhondup Gyasto, who was driven away by police on the bus.

⁷¹ On May 11, 2008, 104 Tibetan women were detained on buses and on the streets in and around Boudha as they attempted to reach a women’s silent protest march, which had been granted permission to proceed by the Kathmandu CDO the same morning. The women were all held at Boudha Police Station until evening. On the same day, 464 other women (and one man) were detained at other locations.

Headquarters to sign a document. The inspector said he would ensure he was not detained.

At Naxal Police Headquarters, Tenzin Jamphel was questioned by a Senior Superintendent of Police (SSP) for around 15 to 20 minutes. The SSP asked him, “Who is telling you to do this? What organization are you affiliated with? Is the Tibetan exile government telling you to do this?” He was then transferred in a police jeep with a gun pointed at him to the Kathmandu chief district officer’s Office. Tenzin Jamphel recalls the chief district officer saying to him:

Do you know why you have been given RC [Refugee Card]? When you are living in Nepal you should follow the laws of Nepal. As a refugee you cannot demonstrate in Nepal. If you want to protest we can send you back to Tibet. This is the last warning we are giving you. You are on the list of the wanted people. If you take part in any demonstrations in the future and you are brought here we will take back your RC and send you back to Tibet. You have a long record of demonstrations in Nepal – your name has been registered at different police stations in the past.

Tenzin Jamphel was accompanied by a Nepali monk who was his friend. This Nepali monk was asked: “You are Nepali. Why are you getting involved in a Tibetan political movement? Do you know what problems we are facing in Nepal? We have so many problems. Why are you a monk?”

Tenzin Jamphel and his Nepali friend were then told they must sign a document. When they refused they were informed, “If you do not sign then you cannot leave here.” They then signed the document, which read, “We willingly agree to sign this paper and agree to abide by following conditions: From this date in the whole of Nepal we will not do anything to disrupt peaceful security, and it is our responsibility to not do any illegal activities.” The chief district officer then told his secretary to add the document to Tenzin Jamphel’s file and to add his name to the “list.” After the Nepali friend left the room, the chief district officer said that there would be four copies of the signed document: one for the Naxal Police Headquarters, one for the

Chinese Embassy, one for the District Office, and one for the Home Ministry, and that if Tenzin Jamphel told anyone this he would be arrested.

Over the next two months, Ward 15 police officers continued to visit Tenzin Jamphel and ask about his activities and the activities of the Tibetan community in Swyambu.

The Interim Constitution of Nepal only allows preventive detention if there is evidence of “an immediate threat to the sovereignty and integrity or law and order situation of Nepal.”⁷² Nepal’s Public Security Act (PSA) allows for the use of preventive detention for 90 days by order of the chief district officer. This can be extended for six months on the approval of the Home Ministry “to maintain sovereignty, integrity or public tranquility and order.” Only on one occasion, when three Tibetans were arrested on June 19, has the government of Nepal invoked the PSA to justify arrests of Tibetans (see below).

International human rights law makes provisions for circumstances in which the right to liberty can be temporarily abrogated. Such derogation, however, must be of exceptional character where the life of a nation is threatened, strictly limited in time, subject to regular review, and consistent with other obligations under international law.⁷³ Nepal has not asserted that the Tibetan protests pose such a threat to Nepal, nor has the Nepali authorities’ response met the standards required for derogation from fundamental rights.

Preventive detention under the Public Security Act

On June 19, 2008, two Nepali citizens of Tibetan origin, Nawang Sangmo and Tashi Dolma, President and Vice President of the Tibet Women’s Association, and one Tibetan refugee, Kelsang Chung, director of the Tibet Reception Centre, were arrested from their homes without an arrest warrant. The detention order accused them of

⁷² Interim Constitution of Nepal, 2007, art. 25.

⁷³ The ICCPR recognizes that in certain circumstances, temporary restrictions and limitations of liberty rights may be justified. Article 4 of the ICCPR allows states to “derogate” from some of the standards in times of “public emergency which threatens the life of the nation and the existence of which is officially proclaimed.” ICCPR, art. 4(1). But such measures must be necessary and “strictly required by the exigencies of the situation.” U.N. Human Rights Committee, General Comment No. 29 States of Emergency (Article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11, August 31, 2001, para. 6.

carrying out “acts that affect national security and public order by chanting anti-China slogans in different public places in the capital.”

The three were taken to the Boudha Police Station before being transferred to Hanumandhoka Police Station, where they were given a preventive detention order issued by the Kathmandu CDO. The order stated that the arrests were necessary to bring an end to demonstrations organized by Tibetan refugees in Nepal as continued demonstrations could have an impact on public peace and security, as well as Nepal’s friendly relations and diplomatic ties with China. The order was issued under section 3.1 of the Public Security Act 2046, which states:

The Local Official, if there are reasonable and sufficient grounds to prevent a person immediately from committing specific activities likely to jeopardize the sovereignty, integrity, or public tranquility and order of the Kingdom of Nepal, may issue an order to hold him/her under preventive detention for specified term and at specified place.

This is the first occasion known to Human Rights Watch that the Public Security Act has been invoked to allow preventive detention since the reestablishment of democracy in Nepal in April 2006.

After receiving the written order the three were transferred to Dilli Bazar Jail. Later that day, Nawang Sangmo and Tashi Dolma were transferred to Badrabandi Central Jail. Habeas corpus writs were filed with the Supreme Court for the three detainees on June 22. During the hearing in the Supreme Court on June 23 and 24 the Court ordered the government of Nepal to “show cause” for the arrests. The Supreme Court usually expects the government to “show cause” within three days but in this case the government took advantage of the legal option to request an extension of seven days to “show cause.”

The next hearing took place on July 8, during which the Supreme Court stated that the order issued by the Kathmandu CDO and the written submission of the Home Ministry failed to satisfy the grounds maintained in the PSA and ordered the individuals released. Normal practice is for the jail authority to then release the individuals immediately. But this did not happen, as the lawyer representing the

three was told by the authorities that that the jail authorities were waiting for an order from the Home Ministry. The three were released later that day, July 8, 2008.⁷⁴

⁷⁴ Human Rights Watch interviews with the lawyer of the detainees, Govinda Sharma between June 19 and July 8, 2008 in Kathmandu.

V. Treatment in Detention

Beatings

Since March 10 there have been four reported incidents of multiple beatings of Tibetans in detention. Three incidents took place at Boudha Police Station on March 10, 14, and 25, with a fourth at Singh Durbar Police Station on March 31.

On March 10, police beat 14 Tibetans at Boudha Police Station following their arrest during protests in the area. The 14 arrived in police vans in two or three groups. The vans drove inside the gate and then the police dragged them into the station past a line of eight or nine policemen who kicked and punched them. A female assistant subinspector of police ordered the officers to hit and kick them, and one woman was dragged inside by her hair. Once all the protesters were inside the police station, the beatings stopped. They heard a second group of Tibetans shouting and crying in pain as they were dragged into the police station in a similar manner. The DSP told the group: “You are criminals and you are forcing us to hit you.”⁷⁵

On March 14, police badly beat three Tibetan male protesters arrested individually inside Boudha Police Station between 6:30 and 7:30 p.m. Tsering Singe, age 32, was protesting just outside the Boudha Stupa gate when police approached him and took his headscarf and threw his candle away. They then hit him with a *lathi* and told him to run away. When he didn’t run away, five or six policemen started pulling his hair, kicking and punching him, and then began to hit him with their *lathis*, including in the head, for around two minutes. He saw the same being done to others. They then dragged him inside the courtyard of the station, where for about six minutes he was kicked in the stomach, hit with *lathis* on his legs, and punched in the head. The police took him inside the station, where they hit him while he was standing and then pushed him onto a chair, where they continued to beat him.

A second Tibetan was then dragged into the courtyard shouting in pain. The police stopped beating Tsering Signe and ran outside to the courtyard to beat the new

⁷⁵ Human Rights Watch interview with Lhundup Gyatso, Kathmandu, March 25, 2008, and Lhamo Dolkar, Kathmandu, March 14, 2008.

arrival. Tsering Signe saw the second man on the ground surrounded by around seven policemen who were hitting him with *lathis*, and kicking and punching him on the legs and shoulders. After about two minutes, Tsering Signe went outside to help the man come inside and asked the police to stop beating him. The policemen continued to beat Tsering Signe and the other man for another two minutes. The police then hit the second man on the thighs, ankles, and head (and on the hands when he tried to protect his head) for about three minutes until one of the *lathis* broke. After another *lathi* was fetched, the beating recommenced for a further two minutes and only stopped when a third man was brought inside. The third man told Tsering Signe that he had been beaten in the courtyard. Five or six policemen were involved in these beatings inside the police station building, during which the men were also verbally abused. The men were then told to sit on a bench for a further 30 minutes. All three men sought medical care following their release.⁷⁶

On March 25, around 71 individuals were released from detention at 9.45 p.m.. Some made their own way home while the remaining 66 boarded two buses arranged to take them back to Boudha. Eight additional Tibetans also boarded these buses to return home to Boudha. All 74 people on the buses were arrested about 10.15 p.m.. Around five or six police officers forced the two buses to stop around 500 meters from the Boudha Police Station and entered the buses. The buses then continued forward along the road and reached a roadblock, where the Tibetans were forced out and dragged into the police station past a line of police officers. Some reported being beaten as they were dragged inside. They were then separated into two groups, with some taken upstairs to meet the DSP and others kept downstairs. Those kept downstairs were asked to put out their hands and were threatened with *lathis*, and one man was hit. They were told that if they protested the following day the police would “cut off their hands and legs.” One man who asked why they had been arrested was slapped in the face by a plainclothes police officer. Individuals in the group taken upstairs were verbally threatened and questioned (see section on threats of deportation and violence below). All of those detained were released around 11 p.m. after having their photographs and names taken.⁷⁷

⁷⁶ Human Rights Watch interview with Tsering Signe, Kathmandu, March 25, 2008.

⁷⁷ Human Rights Watch interviews with Namcho Rimpoche, Kathmandu, March 25 and April 6, 2008; Tenzin Wangpo, Kathmandu, March 25 and April 6, 2008; Wangdu Tsering, Kathmandu, March 25; Penpa Tashi, Kathmandu, March 25, 2008;

On March 31, Dawa, age 37, Nawang Tenzin, age 28, Lobtang Tuboho, age 18, and Nawang Tenzin, age 33, were beaten at Singh Durbar Police Station. These four men were the last of a group of detained Tibetans to arrive, and instead of being kept in the courtyard of the police station with the others, they were forced into a cell. In the doorway of the cell the police hit one on the back with a rifle butt and hit and kicked the others on the shoulders. Once inside the cell they begged the police to stop beating them. The Tibetans in the courtyard started yelling for two to three minutes that they wanted to be with the ones inside the cell, and a subinspector of Police responded by ordering the release of the men in the cell.⁷⁸

Sexual harassment of women

The DSP at Boudha Police Station sexually harassed two female Tibetan protesters on March 25, ordering the women to be brought separately into his office between 10 and 11 p.m.. The first, Tenzin Palzom, age 28, was brought in and had the door locked behind her after she said in a group setting that she would continue to protest. The DSP said, “Why are you protesting? We could hand you over to the Chinese authorities.” He then proceeded to close the curtains in the room and said something like “The Chinese love her and he loves her too.” Tenzin Palzom panicked and tried to open the door. The DSP then pressed a button, and the door was opened from the outside and she was allowed to leave.⁷⁹ Tenzin Palzom said, “I felt like I was going to be sexually assaulted by him.” The second woman, Nima Sangmo, age 33, was then brought into the room. The DSP asked her for her name, address, the name of her husband, what work she and her husband did, how many children she had, the name of her housekeeper, and her phone number. Nima Sangmo was sitting on the sofa in the DSP’s office with the DSP sitting in front of her. The DSP asked if he could sit next to her and if he could have a kiss. Nima Sangmo replied no and was allowed to leave the office. As she left the room the DSP said “Can I have you?”⁸⁰

Sichoe Dolma, Kathmandu, March 25, 2008; Tenzin Palzom, Kathmandu, March 26, 2008; and Dukar Gyal, Kathmandu, April 6, 2008.

⁷⁸ Human Rights Watch interviews with the four detainees on March 31. The interviews were conducted by telephone through an interpreter.

⁷⁹ Human Rights Watch interview with Tenzin Palzom, Kathmandu, March 26, 2008.

⁸⁰ Human Rights Watch interview with Nima Sangmo, Kathmandu, March 26, 2008.

We did not receive other reports of this type of sexual intimidation of detainees and these appear to have been isolated incidents. Regardless, action should be taken to discipline the police officer involved.

Denied or restricted medical care

The authorities have often provided Tibetan detainees inadequate medical care, and at times have denied medical care altogether. There appears to have been some minor improvement in provision of medical care starting in mid-April, but authorities have not been consistent. On some days medical care is more readily provided than on others without any clear across-the-board improvement.

The Standard Minimum Rules for the Treatment of Prisoners (Rule 22), the Basic Principles for the Treatment of Prisoners (Principle 9), and the Body of Principles for the Protection of All persons under Any Form of Detention or Imprisonment (Principle 24) all protect the right of detainees to access medical care. The Standard Minimum Rules ensure access to specialist medical care where necessary. By denying detained Tibetans access to medical care, the Nepal Police are failing to meet these international standards. Purposefully withholding assistance can constitute cruel, inhuman, or degrading treatment, and even torture, under international law.

Denial of medical care appears to have been worst at Ghan II Police Barracks. Individuals detained at other locations have also reported denial of or delayed access to medical care, although not as consistently as those detained at Ghan II Police Barracks. This may be due to fewer and less regular detentions at other locations, rather than a difference in police behavior.

A man whose teeth were broken as a result of being struck with a rifle butt was not provided with medical care during his detention. A young man with blood in his feces, who was vomiting and experiencing dizziness possibly because of being hit on the head with a *lathi*, was not provided with medical care despite being told that a doctor would come.⁸¹ On April 2, a monk was denied medical care by police from

⁸¹ Human Rights Watch interview with Tenzin Wangpo, Kathmandu, March 25 and April 6, 2008.

Kamal Pokhari Police Station for over one hour, despite excessive vomiting and periods of unconsciousness and friends repeatedly seeking medical care for him.⁸²

In another case, a young woman was denied medicine to prevent an epileptic fit, despite a human rights worker being inside the gate of Ghan II Police Barracks with the medicine. Her condition deteriorated so badly over the 90 minutes that she was denied medical care that police eventually gave permission to a group of male Tibetan detainees to carry her to a nearby hospital. The same woman fainted at Jawalakel Police Station on another occasion, and when her friends requested medical care they were told, “Wait, wait” by the police. After her condition deteriorated over the next 30 minutes, the police eventually took her to Patan Hospital in a police jeep.⁸³

On March 10, Nima Tsering, age 61, asked to see a doctor when he was detained at Gausala Police Station, as he had fainted on the street due to a police beating. The police officers said they could not do anything for him and did not even provide him with water.⁸⁴ On March 29, a monk fell unconscious at Ghan II Police Barracks; his friends and a human rights worker sought medical care for him over a period of one hour. The inspector responded that the monk had no visible wounds, but he would bring a doctor. No doctor came in the next 45 minutes, despite the UN Office of the High Commissioner for Human Rights seeking treatment for him.

The few individuals who have received medical care have always been returned to detention at Ghan II Police Barracks, an open yard, following the provision of care. This included three monks who were unable to walk unassisted, the young woman who suffered from an epileptic fit, a minor who had fainted, the unconscious monk, and many others. In one case a woman in visible pain and unable to walk unaided was forced to return from the hospital to the open yard. She had recently had surgery on her stomach and had been hit in the stomach during the protest. It was only after extensive negotiations by a human rights worker that the woman was allowed to seek further medical care.

⁸² Human Rights Watch interview with Tibetan medical volunteer, Kathmandu, April 2, 2008.

⁸³ Human Rights Watch interview with Tashi Dolma, Kathmandu, March 24 and April 6, 2008.

⁸⁴ Human Rights Watch interview with Nima Tsering, Kathmandu, April 6, 2008.

Human Rights Watch has also received several reports of individuals who have fainted or lost consciousness during arrest, and who have woken up in the back of a police truck or van or at the place of detention, instead of being given medical attention.

Substandard conditions in detention

None of the detention facilities in Kathmandu is equipped to deal with the large numbers of people that have been arrested since the start of the demonstrations, particularly for overnight detention. Ghan II Police Barracks, where many Tibetans have been detained, is not a regular detention facility; it is not equipped to detain large numbers of people and has none of the necessary basic facilities to accommodate overnight detentions. Nevertheless, individuals have been held at Ghan II overnight on two occasions (April 2 and 16).

At Ghan II Police Barracks, the detainees are kept in a large outdoor yard area resembling a playing field, with limited shade from nearby trees. There is a basic toilet block that may be adequate for small numbers of detainees. If it rains, the detainees are moved into a nearby shed that is regularly used by the police for sleeping, but the mattresses, blankets, and sometimes wooden bed bases are removed, forcing the Tibetans to sleep on the concrete floor. This indoor space is not large enough to house large numbers of detainees.

At other locations, detainees have usually been kept in the courtyard of the police station for the period of their detention. On some occasions, however, Tibetans report that they have been held in large numbers in small cells for a couple of hours before being allowed to stay in the courtyard. They describe being unable to sit down in the cell due to limited space.

The Nepali authorities have not provided Tibetan detainees with food or water, which instead has been provided by friends and family of the detainees. It has generally been difficult and time-consuming to negotiate with the police to allow these items

to be taken inside the Ghan II Police Barracks, and on some occasions the police have refused to allow food, clothing, and blankets to be provided to detainees.⁸⁵

⁸⁵ Human Rights Watch has directly observed conditions inside most places where Tibetans have been detained and has observed the lengthy negotiations between the police and friends and relatives attempting to provide food, water, clothing and blankets to the detainees.

VI. Threats, Harassment, and Intimidation of Tibetans

Threats of deportation

Police have routinely threatened Tibetans with deportation to China during arrests and while holding them in detention. The authorities' widespread use of this threat suggests it is Nepali government policy and could be considered a form of state-sponsored intimidation. Security force commanders know or should know their officers are threatening Tibetans with deportation and thus should be held accountable for the continuing threats.

Under the Convention against Torture, Nepal may not deport anyone to a country where they may face torture.⁸⁶ Customary international law also prohibits *refoulement* (return) of refugees to places where a person would face a threat of persecution. The UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has cited China for its abuse of political dissidents.⁸⁷ Those of Tibetan origin who have been protesting Chinese rule in Tibet would almost certainly be treated as dissidents or even separatists.

Nearly all Tibetans involved in protests interviewed by Human Rights Watch say they have been threatened with deportation, many on several occasions. Most people interviewed reported junior police officers telling them, "If you protest tomorrow we will send you back to China," or "I will confiscate your Refugee Card and send you back to China." These threats were usually made in detention and sometimes during arrest.⁸⁸

⁸⁶ Convention against Torture, art. 3.

⁸⁷ Report of the Special Rapporteur on torture to the Commission on Human Rights, 2006, E/CN.4/2006/6/Add.6, http://ap.ohchr.org/documents/dpage_e.aspx?m=103

⁸⁸ Human Rights Watch interviews with Penpa Dolma, Kathmandu, April 6, 2008; Tenzin Lhanzom, Kathmandu, April 6, 2008; Tenzin Wangpo, Kathmandu, March 25 and April 6, 2008; Tashi Lhakyi, Kathmandu, April 6, 2008; Nima Tsering, Kathmandu, April 6, 2008; Lhumo Tashi, Kathmandu, April 6, 2008; and Lhundup Gyatso, Kathmandu, March 25, 2008.

Officers as senior as a DSP have similarly threatened large groups in detention. For example, on March 15, a police officer at Jawalakel Police Station said to a group, “We will deport you to China, and you know how they will kill you.”⁸⁹

Around 8 p.m. on March 24, the authorities ordered the 241 Tibetans detained at Jawalakel Police Station to line up with men on one side and women on the other. A senior police officer in civilian clothes then entered the compound and said, “If you make disturbances like this, then we will take you to the border and hold you there for two to three months. I have the authority to send you back to China or hold you at the border for two or three months.”⁹⁰ On April 3, a police officer told detainees held overnight: “We will check everything. Give your name and details. We have a law to surrender you back there [China].”⁹¹ Also on April 3, after being held overnight, detainees were told, “Since you are protesting continuously we are going to check who has a Refugee Card or citizenship, and people who have no identity we will hand you to the Chinese.”⁹² On April 15, a senior police officer from Kamal Pokhari Police Station required those held at Ghan II Police Barracks to show their ID cards, and later a Ghan II police officer threatened the same group with deportation to China if they could not produce proof of refugee status in Nepal.⁹³

Some Tibetans have received individualized threats of deportation. For example, around 10:30 p.m. on March 25, following the arrest of 74 individuals⁹⁴ at Boudha Police Station, a 26-year-old woman who said she would continue to demonstrate was put into a room alone with the DSP. The DSP said, “Why are you demonstrating? We could hand you over to the Chinese authorities.”⁹⁵ Another woman perceived as a protest leader was pointed at and told at Jawalakel Police Station, “If you demonstrate tomorrow we will *lathi* charge you and hand you over to the Chinese.”

⁸⁹ Human Rights Watch interview with Tenzin Jinpa, Kathmandu, March 24, 2008.

⁹⁰ Human Rights Watch interview with Tenzin Palzom, Kathmandu, March 26, 2008.

⁹¹ Human Rights Watch interview with Tenzin Wangpo, Kathmandu, March 25 and April 6, 2008.

⁹² Human Rights Watch interview with Lhumo Tashi, Kathmandu, April 6, 2008.

⁹³ Human Rights Watch interview with Tenzin Wangpo, Kathmandu, April 15, 2008 and Tashi Tsering, Kathmandu, April 15, 2008.

⁹⁴ Sixty-six of those arrested at this time were re-arrests having been detained at Ghan II Police Barracks until around 9.45 p.m. the same evening. Eight others joined them on the bus to return home from Ghan II Police Barracks and were also arrested.

⁹⁵ Human Rights Watch interview with Tenzin Palzom, Kathmandu, March 26, 2008.

On a separate occasion, also at Jawalakele Police Station, a police officer told her, “If you come tomorrow we will put you in a truck and send you back to Tibet. We don’t care about the media and the UN. We are going to hand all Tibetans back to Chinese, and we will raise a stick to all Tibetans.”⁹⁶

Given the history of deportation of Tibetans from Nepal, the widespread and consistent nature of the threats, and the danger presented, Tibetans who spoke with Human Rights Watch take the threats very seriously.

Threats of violence

Police have used the threat of serious violence both in detention and on the streets of Kathmandu. The most commonly reported threat of violence has been beatings if protesters continue to protest. When police rearrested the group of Tibetans outside Boudha Police Station on March 25, an officer said, “As soon as there is a protest you are the ones at the front. If you are there tomorrow we will cut off your hands and legs.” Tashi Dolma reported police saying to her, “If you are not following orders then I will kill you.”⁹⁷

Several Tibetans have also reported threats of violence associated with fulfilling requests by the police, such as, “If you don’t give your mobile phone we will hit you with the *lathi*,” or, “If you are not silent we will beat you.”⁹⁸

Police surveillance and visits

A small group of Tibetans have reported that the police have placed them under regular surveillance. Perceived leaders of the protests report sighting individuals in civilian dress that they assume to be police posted outside their homes, and uniformed police making regular visits to their neighborhoods. They have also reported being followed by such people on the street. Those carrying out the surveillance change regularly, but the families of the individuals who report the surveillance say they are beginning to recognize the faces.

⁹⁶ Human Rights Watch interview with Nima Sangmo, Kathmandu, March 25 and April 6, 2008.

⁹⁷ Human Rights Watch interview with Tashi Dolma, Kathmandu, March 24 and April 6, 2008.

⁹⁸ Human Rights Watch interview with Nima Tsering, Kathmandu, April 6, 2008, Lobsang Jinpa, Kathmandu, April 6, 2008, and Dawa Phuntsok, Kathmandu, April 6, 2008.

Several locations have also been under police surveillance. For example, Jawalakel Tibetan Camp has had several visits by plainclothes police officers. Such a visit was particularly obvious on March 20, when four police officers from Jawalakel Police Station visited the camp and were recognized by local residents. The police tried to speak with a group of Tibetans in a tea shop and made one round of the camp on foot. One police officer returned later on a motorbike to make a second round of the camp. On the same day a uniformed police officer asked at the school gate what the program inside the camp was that day. On a separate occasion, Lhundup Gyatso reported seeing individuals in civilian clothes moving about inside the camp with walkie-talkies. Tibetan children ages 11 to 13 who live in the camp have reported being asked by police where their elders are.⁹⁹

Uniformed police officers have visited the Tibet Reception Center on three occasions since March 10—once on March 31 and twice on April 1. Such visits are considered unusual. The police officers asked the gatekeeper, “Any functions at TRC today? Any people went out from TRC today?” On one occasion TRC staff went to speak to the police officers and were asked, “You people are protesting in front of the Chinese Embassy. Is there any program around Swyambu?”¹⁰⁰

Kunsang Chodrak reported that the Kopan Monastery received a visit by the police. This was particularly unusual in that the police officers actually entered the monastery.¹⁰¹

The nunnery at Swyambu, which is located directly next door to a police station, has received several visits by local police. Human Rights Watch observed one such visit by three police officers on March 3 at 7:40 a.m.. The visits have been associated with the short-term de facto house arrest of the nuns on some days and on other days the nuns feeling less free to leave the Swyambu area.¹⁰²

⁹⁹ Human Rights Watch interviews with Tashi Tsering, Kathmandu, March 20, 2008, Lhundup Gyatso on, March 25, 2008, and Lobsang Tsering, Kathmandu, March 25, 2008.

¹⁰⁰ Human Rights Watch interview with Lobsang Jinpa, Kathmandu, April 6, 2008.

¹⁰¹ Human Rights Watch interview with Kunsang Chodrak, Kathmandu, March 25, 2008.

¹⁰² Human Rights Watch interview with a senior nun from Swyambu, Kathmandu, March 29, 2008.

Other Tibetans who joined protests have reported being followed by the police. Tenzin Lhanzom, age 15, reported being followed to a shopping mall near the Chinese Embassy by a plainclothes policeman on April 2.¹⁰³

Taking of photographs

On some occasions Tibetan protesters have been photographed in detention, police officers telling them, “If I see you tomorrow protesting we will see you because we have your picture,” or, “Now we have your photo we will recognize you. Now if you go to protest you will have a difficult life.”¹⁰⁴ While detainees were standing in line to be photographed during the re-arrest on March 25, a Nepali man came with a video camera and filmed everyone in the line, and those who attempted to turn their heads were forced to look at the camera. While this filming was being conducted, a police officer said, “Why did you come here? You motherfucker, why are you protesting here? If you protest tomorrow we will deport you back to China.”¹⁰⁵ Tibetans have reported being scared that their photographs will be given to the Chinese or used to identify them for arrest or deportation.

Tibetan refugees in Nepal are well informed of how “separatists” are treated in China, and they have told Human Rights Watch that their fear of deportation is even greater with the risk of being labeled as such by the Chinese government.

Making lists of those to be detained

On March 17, members of the Tibetan community learned from a reliable source that a list had been drawn up of 11 Tibetans who were current or former leaders of local Tibetan organizations. Human Rights Watch was provided with the names of the 11 people on the list. When a senior Nepali lawyer asked a senior member of the Nepal Police about this list, he was told that arrest warrants had not been issued for the people on the list, but that the possibility of preventive detention could not be ruled out. Human Rights Watch was told by leading figures in the Tibetan community that another five people were later added to the list. It is believed the list was created to

¹⁰³ Human Rights Watch interview with Tenzin Lhanzom, Kathmandu, April 6, 2008.

¹⁰⁴ Human Rights Watch interview with Tenzin Palzom, Kathmandu, March 26, 2008.

¹⁰⁵ Human Rights Watch interview with Dukar Gyal, Kathmandu, April 6, 2008.

instill fear within the Tibetan community. This is of particular concern to Human Rights Watch, given the previous use of “blacklists” of human rights activists and political activists by the Nepali authorities in December 2004 and February 2005.¹⁰⁶

¹⁰⁶ In December 2005, the names of five Nepali human rights activists were circulated by the then Royal Nepal Army in what local and international human rights organizations perceived as an attempt to instill fear in the human rights community. See Human Rights Watch press release, “Nepal: Human Rights Defenders Under Threat: Enhanced International Protection Urgently Needed,” <http://hrw.org/english/docs/2004/12/17/nepal9910.htm>. In February 2005, a list of 21 human rights defenders was circulated immediately following the King’s takeover for the apparent purpose of arrests, restrictions on freedom of movement, and surveillance. See Human Rights Watch press release, “Nepal: Danger of ‘Disappearances’ Escalates: International Monitoring, Pressure Vital to Protect Rights,” <http://hrw.org/english/docs/2005/02/09/nepal10152.htm>.

VII. Restrictions on Freedom of Movement, Expression, and Assembly

The Nepali government has restricted the movement of Tibetans within the Kathmandu Valley, individually and in groups, since March 10. Nuns, monks, and elderly religious practitioners who regularly move between the three main Tibetans areas (Swyambu, Boudha, and Jawalakel) for religious purposes, particularly for performing puja (prayers), have been impeded from moving and sometimes arrested.

International human rights law prohibits restrictions on the freedom of movement, including that of non-nationals, except when the restrictions are prescribed by law, are “necessary to protect national security, public order, public health or morals or the rights and freedoms of others,” and are consistent with the other fundamental rights.¹⁰⁷ The restrictions placed by the Nepali government on Tibetans have not met these requirements.

As already noted, the police have stopped buses carrying Tibetans and forced them under police escort to stop at police stations on the way to their destination, where the Tibetans are subjected to harassment or arrest. A Tibetan told Human Rights Watch:

One day when I was coming from Boudha to Swyambu, the police stopped my microbus and one police asked me to come out and I said, ‘No, I am not going to go out there.’ And he said, ‘Please go inside the police station.’ I said I have done nothing wrong, but he caught me, said go inside the police gate, then he phoned the head of police and they let me go. I was the only Tibetan on the bus.¹⁰⁸

On two occasions during the week of March 24, the police at Chabahil prevented elderly religious practitioners from returning from Boudha to Swyambu. Police

¹⁰⁷ ICCPR, art. 12.

¹⁰⁸ Human Rights Watch interview with senior nun from Swyambu, Kathmandu, March 29, 2008.

stopped and boarded the bus at Chabahil, then forced the bus to take a very roundabout route, stopping for several minutes at three police stations along the way. Eventually the elderly passengers insisted on leaving the bus during one of its stops and took taxis to their homes.¹⁰⁹ On a third occasion during the same week, Human Rights Watch and at least two foreign journalists with video cameras observed police stopping the same group at Chabahil, after which police boarded the bus and it proceeded down the road for about 100 meters. Negotiations then took place in full view of the media, and the bus was eventually allowed to go on its way.

One elderly Tibetan told phayul.com that on March 27,

I went to Bouda myself, while returning from Bouda this evening, 25 of us elderly came in a reserved bus, our bus was stopped at Bouda Police Station for about 15 minutes, we asked for reason and the police said that they were providing security to us, a police vehicle escorted our bus and handed us over to Chabahil Police Station where we were again stopped for about 10 minutes, then we were escorted to Chakrapath Police Station and then to the Balaju Police Station where they stopped our bus again for about 10 minutes, then we cannot take it any longer, so we all got off the bus and went home ourselves.¹¹⁰

One extreme example was the forced detention of Tibetan nuns within their nunnery in Swyambu, which happens to be located beside a police station. On March 27, the nuns attempted to travel by bus to pray at Boudha, but were stopped by the police. The following day, a local community leader intervened with the police on behalf of the nuns and, in the presence of human rights observers, the nuns were allowed to travel to Boudha. But the next day the police did not allow the nuns to move outside the nunnery at all.

A senior nun told Human Rights Watch:

¹⁰⁹ Human Rights Watch interview with elderly religious man, Kathmandu, March 27, 2008.

¹¹⁰ "Tibetan school children stage protest in UN compound in Nepal," phuyal.com, March 28, 2008, <http://www.phayul.com/news/article.aspx?article=Tibetan+school+children+stage+protest+in+UN+compound+in+Nepal&id=20145>.

The day before yesterday [March 27] the Nepali police came next to our gate in two trucks. Early in the morning, while we were praying in our prayer hall, a nun came up and said that the Nepali police had said they were not allowed to go out to do prayers. After that when we go outside the police said, 'Where are you going?' And we said, "We are going to do prayer.' And the police said 'No, no, you must do your prayer inside the nunnery. Don't go outside today.' They stay there every day, until afternoon, outside our gate. Every morning there are more than seven police staying outside.¹¹¹

Individuals attempting to move down Pulchowk Road from the Tibetan camp in Jawalakel have been stopped and questioned by Nepal's police. The police established a guard post near their camp under what is known locally as "the big tree" for around 10 days during the main protest period. Tashi Tsomo from Jawalakel told Human Rights Watch,

Around 500 meters from our camp there are police waiting. When I reached there to take a taxi, a policeman came out from a teashop and shouted, 'Where are you going? Where are you going?' I had to quickly jump into the taxi and speed away.¹¹²

Lhundup Gytso told Human Rights Watch,

I have seen police at the 'big tree' in Jawalakel stopping Tibetans and telling them to go home. People usually find another way to walk.¹¹³

The area in front of Boudha Police Station has also become a virtual checkpoint for Tibetans attempting to leave the area. Kunsang Chodrak told Human Rights Watch,

I have seen police checking nuns and monks on the street. At Tusal I saw police checking cars from the side of the road. I saw the police

¹¹¹ Human Rights Watch interview with senior nun from Swyambu, Kathmandu, March 29, 2008.

¹¹² Human Rights Watch interview with Tashi Tsomo, Kathmandu, April 8, 2008.

¹¹³ Human Rights Watch interview with Lhundup Gyatso, Kathmandu, March 25, 2008.

stop taxis and take some nuns and monks from the cars towards the police station.¹¹⁴

In Boudha on March 24, 72 Tibetans were detained on the street and held at Boudha Police Station. They were not protesting when they were arrested.¹¹⁵

After what Nepali authorities said was “a request from the Chinese government,”¹¹⁶ Nepal in March placed movement restrictions in the areas around Mount Everest base camp and on the movement of climbers up Mount Everest in anticipation of the ascent of the Olympic torch up Mount Everest on the Chinese side of the border. Climbers were restricted from climbing the mountain for several days around the time of the torch’s ascent in late April and early May. Restrictions were also put on the types of items climbers could carry to the top of the mountain. In late April one climber was forced to descend the mountain and asked to leave Nepal after security officers posted on the mountain found a “Free Tibet” banner in his bag.¹¹⁷ Journalists were asked to leave base camp on April 28 in what appeared to be concerted efforts by the government of Nepal to restrict reporting on events in the area.¹¹⁸ For instance, on April 30, the government of Nepal told the BBC to leave Base Camp in Nepal, where they were covering the story of the Olympic torch summiting Mount Everest.¹¹⁹ The Nepali government also authorized the police to use lethal force to suppress protests associated with the Olympic torch.¹²⁰

Since March 14, China has also effectively closed the Nepal-China border. The steady flow of Tibetans transiting through Nepal to India has completely ceased as individuals cannot cross the border out of China into Nepal.¹²¹ International law permits everyone the right to leave any country, including their own.¹²²

¹¹⁴ Human Rights Watch interview with Kunsang Chodrak, Kathmandu, March 25, 2008.

¹¹⁵ See footnote 71.

¹¹⁶ “Nepal agrees to China Everest ban,” BBC Online, March 14, 2008, http://news.bbc.co.uk/2/hi/south_asia/7296677.stm

¹¹⁷ “Nepal deports pro Tibet climber,” BBC Online, April 29, 2008, http://news.bbc.co.uk/2/hi/south_asia/7372798.stm

¹¹⁸ Ibid.

¹¹⁹ “News Blackout at Everest Base camp,” BBC Online, April 28, 2008, http://news.bbc.co.uk/2/hi/south_asia/7371975.stm

¹²⁰ “Additional Security at Everest to safeguard Olympic torch,” *Nepalnews.com*, April 21, 2008, <http://www.nepalnews.com/archive/2008/apr/apr21/news07.php>

¹²¹ Human Rights Watch interview at Tibetan Reception Center, Kathmandu, March 21, 2008.

¹²² ICCPR, art. 12.

VIII. China's Role

Historically the government of Nepal has banned “anti-China” activities on Nepali soil.¹²³ Since Tibetan demonstrations in Kathmandu protesting China’s crackdown in Tibet began on March 10, Beijing has conveyed its views privately and publicly to Nepal through its ambassador. In April 2008 Nepali Prime Minister Girija Prasad Koirala met with the Chinese Ambassador to Nepal Zheng Xianglin. According to Kantipuronline, Ambassador Zheng expressed concern over increasing “anti-China activities” being carried out in Nepal. The prime minister reportedly assured Zheng that no “anti-China” activity would be allowed in Nepali territory.¹²⁴

Soon after the protests began on March 19, 2008, the Communist Party of Nepal (Maoist) (CPN-M), the largest party in the recently elected constituent assembly, issued a statement expressing solidarity with China, saying, “We want to draw the attention of the concerned [Nepali government] authority to the activities against China at the Nepal-China border.”¹²⁵

Ambassador Zheng has repeatedly accused international organizations, including the United Nations and some members of the diplomatic community, of interfering in Nepali domestic affairs. Yet his public statements and other evidence of Chinese pressure and activity in Nepal, detailed below, reflect the extent to which China itself is seeking to influence the Nepali government’s response to the peaceful protests by Tibetans in Nepal.

¹²³ This position has been clearly articulated by all recent governments in Nepal. In May 2005, then Prime Minister Girija Prasad Koirala assured visiting Chinese Premier Zhu Rongji that no anti-China activities would take place in Nepal (<http://www.chinaembassy.se/eng/xwdt/t101363.htm>). In April 2002, Prime Minister Sher Bahadur Deuba stated the same (http://english.peopledaily.com.cn/200204/17/eng20020417_94198.shtml). In 2005 the King of Nepal, who had then assumed all executive powers, said during a meeting with China’s Foreign Minister Li Zhaoxing that he, too, would not allow anti-China activities in Nepal (<http://www.highbeam.com/doc/1G1-131039136.html>). In November 2006, Prime Minister Girija Prasad Koirala, representing the Seven Party Alliance, affirmed that there would be no anti-China activities permitted in Nepal (<http://english.hanban.edu.cn/english/international/189976.htm>).

¹²⁴ “PM Koirala vows to foreclose anti-China activities in Nepal,” *E-Kantipur.com*, April 7, 2008, <http://www.kantipuronline.com/kolnews.php?nid=143354>.

¹²⁵ CPN-Maoists issues statement on Tibet unrest, *Kantipuronline*, March 19, 2008, <http://www.kantipuronline.com/kolnews.php?nid=141292> and “Mahara express support to China’s stance on Tibet related issues,” *Nepalnews.com*, June 3, 2008, <http://www.nepalnews.com/archive/2008/jun/jun03/news07.php>.

In a public statement on May 12, 2008, Zheng expressed serious dissatisfaction over the ongoing “anti-China” protests by Tibetans in Kathmandu, and urged the Nepal government to adopt strict measures to curb such “separatist activities”:

I hope the Nepal government can honestly carry out its commitment and not allow these anti-Chinese activities to happen so rapidly in Nepal... The government cannot arrest and release them.¹²⁶

Zheng seemed to suggest that some international entities, including UN agencies and human rights organizations, provoked the situation:

UN Agency staff were present at every demonstration that occurred, I don't know what is the purpose of human rights organizations in Nepal...

In an interview with *The Himalayan Times* published on April 5, 2008, Zheng criticized specific international human rights organizations:

International organizations like Human Rights Watch and Amnesty International have blamed Nepal Police for dispersing the demonstrators and taking away their freedom with violence. A sovereign country has its own rights to regulate activities within its borders. The international organizations have also asked Nepali authorities to mend ways, which can be seen as an intervention in Nepal's internal affairs. They are also trying to exert some negative impact and sabotage Nepal-China relationship.

¹²⁶ “China not happy with handling of Tibetan protests,” *Kathmandu Post*, May 13, 2007, <http://www.kantipuronline.com/kolnews.php?&nid=146754>. *The Telegraphnepal.com* also quoted the Ambassador saying, “We want the Nepali establishment to take severe penal actions against those involved in anti-china activities in Nepal.” “Free Tibet a far cry: Chinese Ambassador to Nepal,” *Telegraphnepal.com*, May 13, 2008, http://www.telegraphnepal.com/news_det.php?news_id=3411.

The impact of the pressure from the Chinese government on the government of Nepal can be directly and indirectly seen in Nepal's justice system, in policing and in relation to freedom of movement within Nepal.

There is evidence of direct attempts by Chinese officials to intervene in the Nepali justice system. According to a Nepali lawyer, a senior member of the Nepal Police said that, on the morning of April 3, a Chinese embassy official sought to pressure Nepali authorities to charge six detained Tibetan protesters under the Offences against the State and Punishment Act, 1989. The act penalizes committing, attempting, or inducing others to commit "rebellion against friendly nations by using arms from the territory of the Kingdom of Nepal" with a fine of 5,000 rupees (US\$75) and up to seven years of imprisonment. The Nepali authorities charged six Tibetans with a lesser offense of public nuisance, and later released them from custody.

On March 23, Amnesty International-Nepal notified the Kathmandu chief district officer of its intention to hold a peaceful protest on March 24. The CDO not only denied permission for the protest, he also took the unusual step of issuing his prohibition in writing, stating that the protest could not proceed because it would "adversely affect relations between [Nepal and China]."¹²⁷ The protest nonetheless went ahead, and 148 people were arrested, including 13 Nepali human rights defenders. The police arrested the 13 Nepali human rights defenders prior to any protest taking place—no slogans had been shouted or placards raised prior to the time of arrest. They were held until evening at Singh Durbar Police Station and were not provided with any reason for their arrest.¹²⁸

After what Nepali authorities said was "a request from the Chinese government,"¹²⁹ Nepal in March placed movement restrictions in the areas around Mount Everest base camp and on the movement of climbers up Mount Everest in anticipation of the ascent of the Olympic torch up Mount Everest on the Chinese side of the border (see details above).

¹²⁷ Written response from the Kathmandu CDO to Amnesty International-Nepal dated March 23, 2008.

¹²⁸ Human Rights Watch interview with representative of Amnesty International-Nepal, Kathmandu, March 24, 2008.

¹²⁹ "Nepal agrees to China Everest ban," BBC Online, March 14, 2008, http://news.bbc.co.uk/2/hi/south_asia/7296677.stm.

There have been media and other reports of Chinese police operating on Nepali soil since March 10, in particular in the border region. On March 16, a Nepali press photographer working with a foreign journalist was stopped 200 meters inside the Nepal border by 10 Chinese police officers, who took him into an official building and searched his bag and erased his photos in the presence of Nepali police. On April 13, a foreign film crew was questioned by Chinese officials on the Nepal side of the border. Journalists have also reported a significant increase in the number of Chinese security officials operating along and inside the Nepali border.¹³⁰

¹³⁰ "Chinese security deployed in Nepal after Tibet unrest: officials," Agence France Presse, March 15, 2008, <http://afp.google.com/article/ALeqM5gQkq-eNQx-CqYzEtE9oTNTtSo1ng>.

IX. Recommendations

To the government of Nepal

- Protect the rights of all persons in Nepal to freedom of expression and assembly, regardless of legal status, and cease dispersing peaceful protests by Tibetans.
- Take all necessary action to end arbitrary arrests, including unlawful and preventive arrests, of Tibetans and others engaged in peaceful political activity or otherwise going about their daily lives.
- End deportations of Tibetans to China who face persecution or torture.
- Take all necessary action, including the issuance of warnings and the imposition of disciplinary action, against Nepali police who threaten Tibetans with deportation.
- Do not permit Chinese law enforcement personnel to act as law enforcement personnel in Nepal except under the direct control of Nepali authorities and in full accordance with Nepali and international law.
- Ensure respect for freedom of movement, including by issuing orders to cease restrictions on the freedom of movement of Tibetans in Kathmandu Valley.
- Take all necessary steps to ensure that the Nepal police respect Tibetans' right to protest peacefully. End harassment of protesters, including threatening consequences should they participate in future protests.
- Take all necessary and appropriate measures to ensure that the Nepal Police and Armed Police Force cease using unnecessary and excessive force against Tibetan protesters. Allegations of unnecessary or excessive use of force should be fully and impartially investigated and appropriate disciplinary or criminal measures should be taken against the responsible police officers and their commanding officers.
- Issue orders to all police officers to cease sexual assaults on female protesters. Investigations should be conducted into sexual assaults by police that have taken place since March 10, 2008, and the individuals responsible should be prosecuted. Superior officers should also be held responsible for creating an environment tolerant of sexual assault by officers under their command.

- Instruct district superintendents of police not to detain children arrested as protesters unless as a last resort and for the shortest possible period of time.
- Instruct district superintendents of police to ensure that all detainees who request or need medical care are provided prompt and adequate medical attention, including immediate transfer as needed to an appropriate medical facility. Decisions on the continued imprisonment of detainees needing medical care should not be taken without the participation of a medical officer.
- Conduct an independent and impartial investigation into the beatings and other mistreatment of Tibetan detainees at Boudha Police Station. Fully prosecute those found responsible for serious abuses, regardless of rank.
- Ensure that all places of detention meet international standards in regard to sanitation, accommodation, clothing, bedding, and food.
- Ensure that the Home Ministry permits all detainees to have access to legal counsel as soon as possible after being taken into custody.
- Instruct the Home Ministry to adopt measures to end interference and harassment of the media and human rights defenders, including by issuing public statements in support of the right of individuals to engage in freedom of expression, association and assembly.
- Ratify the 1951 Convention relating to the Status of Refugees.

To the government of China

- End all forms of pressure, public and private, on the government of Nepal to arrest, prosecute, or otherwise interfere with Tibetans who are exercising their rights under international human rights law.
- Cease all police operations in Nepal that are not under the direct control of the Nepali authorities. Ensure that any authorized police activity inside Nepal is in full accordance with Nepali and international law. Remove from Nepal and discipline as appropriate all Chinese security forces acting outside of Nepali authority or law.
- Cease public statements attempting to intimidate Tibetans as well as Nepali and foreign journalists and human rights defenders in Nepal from exercising their basic human rights.

- Permit Tibetans in China to exercise their right of freedom of movement to leave and to return to China.

To concerned states and donors

- The European Union, India, the United States and others should continue to issue public statements that they unequivocally support the right to freedom of expression and assembly for all persons in Nepal, including Tibetans.
- Provide support, both financial and political, to the United Nations Office of the High Commissioner for Human Rights in Nepal to address the issues raised in this report.
- Take all appropriate measures to dissuade Nepal from deporting to China any Tibetans who fear torture or persecution.
- Raise human rights concerns of Tibetans in Nepal, as well as in China, during the next session of the UN Human Rights Council.

To the United Nations agencies and mechanisms

- The UN Resident and Humanitarian Coordinator and the UN Office of the High Commissioner for Human Rights should take all necessary measures to assist in the protection of Tibetans and others in Nepal in need of protection from human rights violations, particularly if they seek protection from the United Nations.
- The UN Office of the High Commissioner for Refugees and the UN Office of the High Commissioner for Human Rights should closely monitor the Nepal-China border and act as necessary to prevent *refoulement*, including by making public statements.
- The United Nations Working Group on arbitrary detention, the special rapporteur on freedom of opinion and expression, and the independent expert on minority issues should issue public statements condemning the human rights violations of Tibetans by the government of Nepal, send “urgent action” requests to the government regarding specific cases, and request visits to the country to address, among other issues, the situation of Tibetans.

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